IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

LETTERS PATENT APPEAL NO.239 OF 2006

WITH

CIVIL APPLICATION NO.2105 OF 1997

IN

WRIT PETITION NO.5374 OF 1986

Avtarsing Harbhajansingh Manku : Appellant.

versus

Rambhau Vithoba Khode

Deceased by his heir

Gangaram Rambhau Khode : Respondent.

Ms.Kirti Kokil i/by Kiran Bhagalia & Lalita Panchakshari for the appellant.

Smt.Sonia Miskin i/by N.B.Shah for respondent.

CORAM : D.G.DESHPANDE

SMT.R.S.DALVI, JJ.

DATED : NOVEMBER 21, 2006.

P.C.

1. Heard the learned advocates for the appellant and respondent. At the out set the

advocate for the respondent raised objection to the maintainability of this LPA on the ground that it is against the order in Civil Application. According to her, the LPA is not maintainable against such order. She further contended that the original petition was under Article 227 of the Constitution of India and, therefore, also any order by the Single Judge in such petition, would not be maintainable. Apart from this objection, even on merits We do not find any merit to interfere with the order of the Single Judge. From the order of the Single Judge dated 24th January 1997 it is clear that on 21.6.1996 the Single Judge passed an order in Civil Application No.803 of 1995 to the following effect :-

> "Heard ld.Counsel. The present C.A. herein is made absolute in terms of prayer clause (a) & (b) only on the condition that Tenant/Applicant will deposit upto-date Rent in T.C. If upto-date rent is not deposited within 4 weeks, this order will end & W.P. will stand abated and Interim order will stand vacated."

Thereafter the Court observed that even though the petitioner was bound to deposit the upto-date rent within a period of four weeks from 21.6.1996, no such deposit was made in compliance with the order of the Court and the petitioner was trying to make false and bogus plea of sending money orders and all that. The court clearly observed that nobody has directed the petitioner to send rent by money order and, the direction was clear about deposit of rent in the trial court. The court did not find any merit in that civil application. The court came to positive conclusion that there was no compliance with the order of the court and rejected the application.

2. We do not find that any wrong was committed by the Single Judge. It is pertinent to note that matter arises out of eviction proceedings initiated against the tenant by the landlord, decree for eviction is passed in 1984 and, therefore, this is nothing but an attempt to delay or protract the execution of decree for eviction. Therefore, the LPA is dismissed.

[D.G.DESHPANDE,J]

[SMT.R.S.DALVI, J]